

**REMARKS**

The Office Action dated September 10, 2004 has been carefully reviewed and the foregoing amendments have been made as a consequence thereof.

Claims 1-23 are now pending in this application. Claims 1-23 stand rejected.

The rejection of Claims 3-7 under 35 U.S.C. 112, first paragraph as failing to comply with the enablement requirement is respectfully traversed. Specifically, Applicant respectfully submits that the specification meets the requirements of Section 112, first paragraph. More specifically, Applicant respectfully submits that the specification, including the figures, would enable one skilled in the art to make and/or use the invention as described in the present patent application.

In the outstanding Office Action, it is maintained that the space arrangement of the refrigeration system and the components of the refrigeration system are not defined. Applicant respectfully traverses this suggestion. First, attention is directed to Figures 2-13 which illustrate embodiments of the refrigeration system. Figures 2-13, including the space arrangement of the refrigeration system, are described in the Brief Description of the Drawings and in the Specification. In addition, Applicant has amended Claim 1 to recite a refrigerator including "a refrigeration compartment...a freezer compartment adjacent said refrigeration compartment...a third compartment adjacent said freezer compartment and separated from said refrigeration compartment and freezer compartment by a dividing wall comprising a duct extending through said dividing wall, said third compartment controllable in both a refrigeration mode and a freezer mode." Accordingly, Applicant respectfully requests that the rejection of Claims 3-7 under Section 112, first paragraph, be withdrawn.

The rejection of Claims 3-7 under 35 U.S.C. 112, second paragraph as being indefinite is respectfully traversed. Specifically, Claims 3-6 have been amended as suggested in the Office Action. Claim 7 depends from amended Claim 6. Accordingly, Applicant

respectfully requests that the rejection of Claims 3-7 under Section 112, second paragraph, be withdrawn.

The rejection of Claim 1 under 35 U.S.C. 102 (b) as being anticipated by Peterson et al. (U.S. Patent 5,758,512) ("Peterson") is respectfully traversed.

Peterson describes a refrigerator (20) having a middle fresh food compartment (30) and a bottom freezer compartment (34) arranged below the fresh food compartment and a small freezer compartment (26) arranged above the fresh food compartment. Cool air can be directed to the compartments of the refrigerator by use of a baffle assembly (96) which includes a main rotary damper (102) which can be positioned to provide proportional amounts of chilled air to the three separate compartments based on the degree of cooling required.

Claim 1 recites a refrigerator including "a refrigeration compartment... a freezer compartment adjacent said refrigeration compartment...a third compartment adjacent said freezer compartment and separated from said refrigeration compartment and freezer compartment by a dividing wall comprising a duct extending through said dividing wall, said third compartment controllable in both a refrigeration mode and a freezer mode."

Peterson does not describe or suggest a refrigerator as recited in Claim 1. More specifically, Peterson does not describe or suggest a freezer compartment adjacent a refrigeration compartment, and a third compartment adjacent the freezer compartment and separated from the refrigeration compartment and the freezer compartment by a dividing wall including a duct extending therethrough. Rather, Peterson describes a refrigerator having a middle fresh food compartment, a freezer compartment arranged above the fresh food compartment, and a bottom compartment arranged below the fresh food compartment. Notably, Peterson does not describe or suggest a third compartment adjacent the freezer compartment and separated from the refrigeration compartment and the freezer compartment by a dividing wall. Accordingly, for at least the reasons set forth above, Claim 1 is submitted to be patentable over Peterson.

For at least the reasons set forth above, Applicant respectfully requests that the 102 rejection of Claim 1 as being anticipated by Peterson be withdrawn.

The rejection of Claim 1 under 35 U.S.C. 102 (b) as being anticipated by Hiraoka et al. (U.S. Patent 6,055,826) ("Hiraoka") is respectfully traversed.

Hiraoka describes a refrigerator having an upper refrigerating compartment 100 arranged above an ice storing compartment (600), and a switchable compartment (700). A vegetable compartment (300) is arranged below the ice storage compartment and the switchable compartment, and a freezer compartment (250) is arranged below the vegetable compartment. The ice storing compartment and switchable compartment are completely separated from the refrigerating compartment by a heat insulating wall at their top, side and rear surfaces, and is separated from the vegetable compartment by a bottom insulating wall. The vegetable compartment is separated from the freezer compartment by an insulating wall. A cooling device (3) produces cool air that is circulated to the various compartments by a fan (2) through air supply paths (4 and 5) and air return paths (8 and 9). Cool air directed into the switchable compartment is controlled by a damper (7a). The cool air is drawn through the switchable compartment by the air return path.

Claim 1 recites a refrigerator including "a refrigeration compartment...a freezer compartment adjacent said refrigeration compartment...a third compartment adjacent said freezer compartment and separated from said refrigeration compartment and freezer compartment by a dividing wall comprising a duct extending through said dividing wall, said third compartment controllable in both a refrigeration mode and a freezer mode."

Hiraoka does not describe or suggest a refrigerator as recited in Claim 1. More specifically, Hiraoka does not describe or suggest a freezer compartment adjacent a refrigeration compartment, and a third compartment adjacent the freezer compartment and separated from the refrigeration compartment and the freezer compartment by a dividing wall including a duct extending therethrough. Rather, in contrast to the present invention, Hiraoka describes a refrigerator having an upper refrigerating compartment arranged above an ice storing compartment and a switchable compartment, a vegetable compartment arranged

below the ice storage compartment and the switchable compartment, and a freezer compartment arranged below the vegetable compartment. Notably, Hiraoka does not describe or suggest a third compartment adjacent the freezer compartment and separated from the refrigeration compartment and the freezer compartment by a dividing wall. Accordingly, for at least the reasons set forth above, Claim 1 is submitted to be patentable over Hiraoka.

For at least the reasons set forth above, Applicant respectfully requests that the 102 rejection of Claim 1 as being anticipated by Hiraoka be withdrawn.

The rejection of Claims 8-23 under 35 U.S.C. 103(a) as being unpatentable over Lee (U.S. Patent 5,551,252), in view of Peterson is respectfully traversed.

Peterson is described above. Lee describes a refrigerator having a refrigerating compartment (16), a chilled chamber (21) oriented within the refrigerated compartment, a freezing compartment (15), and a vegetable compartment (32). An evaporator (17) and fan (18) are provided in a heat-exchanging compartment (H) at the rear wall of the freezing compartment. A vertical wall (19) of the compartment (H) is provided in front of and spaced from the evaporator and the fan. A first partition wall (40) is formed between the freezing compartment and the refrigerating compartment, and a main duct (50) extends through the first partition wall. In the upper portion of the main duct, a main damper (51) is provided for controlling the flow of cool air from the heat-exchange compartment into the refrigerating compartment. Additionally, an individual damper (52) is provided for controlling the flow of cool air from the heat-exchange compartment into the chilled chamber.

Applicant respectfully submits that the Section 103 rejection of the presently pending claims is not a proper rejection. As is well established, obviousness cannot be established by combining the teachings of the cited art to produce the claimed invention, absent some teaching, suggestion, or incentive supporting the combination. Neither Lee nor Peterson, considered alone or in combination, describes or suggests the claimed combination. Furthermore, in contrast to the assertion within the Office Action, Applicant respectfully submits that it would not be obvious to one skilled in the art to combine Peterson with Lee, because there is no motivation to combine the references suggested in the art. Additionally,

the Examiner has not pointed to any prior art that teaches or suggests to combine the disclosures, other than Applicant's own teaching. Rather, only the conclusory statement that "[i]t would have been obvious to one having ordinary skill in the art at the time the invention was made from the teaching of Peterson to modify the system of Lee, by adding a secondary fan in order to improve the flow control through the duct and a drawer compartment in order to improve the accessibility of the refrigerator" suggests combining the disclosures.

As the Federal Circuit has recognized, obviousness is not established merely by combining references having different individual elements of pending claims. Ex parte Levengood, 28 U.S.P.Q.2d 1300 (Bd. Pat. App. & Inter. 1993). MPEP 2143.01. Rather, there must be some suggestion, outside of Applicant's disclosure, in the prior art to combine such references, and a reasonable expectation of success must be both found in the prior art, and not based on Applicant's disclosure. In re Vaeck, 20 U.S.P.Q.2d 1436 (Fed. Cir. 1991). In the present case, neither a suggestion or motivation to combine the prior art disclosures, nor any reasonable expectation of success has been shown.

Furthermore, it is impermissible to use the claimed invention as an instruction manual or "template" to piece together the teachings of the cited art so that the claimed invention is rendered obvious. Specifically, one cannot use hindsight reconstruction to pick and choose among isolated disclosures in the art to deprecate the claimed invention. Further, it is impermissible to pick and choose from any one reference only so much of it as will support a given position, to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one of ordinary skill in the art. The present Section 103 rejection is based on a combination of teachings selected from multiple patents in an attempt to arrive at the claimed invention. Since there is no teaching nor suggestion in the cited art for the combination, the Section 103 rejection appears to be based on a hindsight reconstruction in which isolated disclosures have been picked and chosen in an attempt to deprecate the present invention. Of course, such a combination is impermissible, and for this reason alone, Applicant requests that the Section 103 rejection be withdrawn.

Further, and to the extent understood, neither Lee nor Peterson, considered alone or in combination, describes or suggests the claimed combination, and as such, the presently pending claims are patentably distinguishable from the cited combination. Specifically, Claim 8 recites a refrigerator including “an upper compartment including an evaporator and a fan therein, said evaporator and said fan enclosed by an evaporator cover having an inlet and an outlet...a lower compartment separated from said upper compartment by a dividing wall...a duct extending through said dividing wall, said duct providing flow communication between said upper and lower compartments, said duct having a damper disposed therein for opening and closing said duct, said duct having a duct fan disposed therein...a supply conduit having a first end and a second end, said first end coupled to said evaporator cover, and said second end coupled to said duct such that said supply conduit provides flow communication from said evaporator to said duct.”

Neither Lee nor Peterson, considered alone or in combination, describes nor suggests a refrigerator as recited in Claim 8. More specifically, neither Lee nor Peterson, considered alone or in combination, describe nor suggest a duct extending through a dividing wall which separates an upper compartment from a lower compartment, wherein the duct includes a damper and a duct fan disposed therein. Rather, in contrast to the present invention, Lee describes a refrigerator having a refrigerating compartment, a chilled chamber oriented within the refrigerated compartment, a freezing compartment, and a vegetable compartment, wherein a heat-exchanging compartment, including an evaporator and fan, provides cooling air to the various compartments of the refrigerator. Specifically, a main duct extends through a first partition wall formed between the freezing compartment and the refrigerating compartment, and cooling air is channeled through the main duct to the chilled chamber. Additionally, a damper is provided for controlling the flow of cooling air from the heat-exchange compartment into the chilled chamber. However, Lee does not describe a duct fan disposed within the main duct. Moreover, Peterson describes a refrigerator having a middle fresh food compartment, a freezer compartment arranged above the fresh food compartment, and a bottom compartment arranged below the fresh food compartment. Cool air is directed to the compartments of the refrigerator by use of a baffle assembly which includes a rotary

damper which can be positioned to provide proportional amounts of chilled air to the three separate compartments based on the degree of cooling required. Notably, neither Lee nor Peterson, considered alone or in combination, describes nor suggests a duct extending through a dividing wall, and a damper and a duct fan disposed in the duct. Accordingly, Claim 8 is respectfully submitted to be patentable over Lee in view of Peterson.

Claims 9-14 depend from the independent Claim 8. When the recitations of Claims 9-14 are considered in combination with the recitations of Claim 8, Applicant submits that dependent Claims 9-14 likewise are be patentable over Lee in view of Peterson.

Claim 15 recites a refrigerator compartment including “an upper compartment including an evaporator and a fan therein, said evaporator and fan enclosed by an evaporator cover having an inlet and an outlet...a lower compartment separated from said upper compartment by a dividing wall, said dividing wall having a top surface and a bottom surface...a first duct extending through said dividing wall providing an opening from said top surface to said bottom surface, said first duct is proximate to said evaporator...a second duct extending through said dividing wall providing an opening from said top surface to said bottom surface...a gate damper coupled to said top surface of said dividing wall, said gate damper rotatable between an open position and a closed position.”

Neither Lee nor Peterson, considered alone or in combination, describes nor suggests a refrigerator compartment as recited in Claim 15. More specifically, neither Lee nor Peterson, considered alone or in combination, describe nor suggest a lower compartment separated from an upper compartment by a dividing wall having a top surface, a bottom surface, a first duct extending through the dividing wall, a second duct extending through the dividing wall, and a gate damper coupled to the top surface of the dividing wall. Rather, in contrast to the present invention, Lee describes a refrigerator having a refrigerating compartment, a chilled chamber oriented within the refrigerated compartment, a freezing compartment, and a vegetable compartment, wherein a heat-exchanging compartment, including an evaporator and fan, provides cooling air to the various compartments of the refrigerator. Specifically, a main duct extends through a first partition wall formed between

the freezing compartment and the refrigerating compartment, and cooling air is channeled through the main duct to the chilled chamber. Moreover, Peterson describes a refrigerator having a middle fresh food compartment, a freezer compartment arranged above the fresh food compartment, and a bottom compartment arranged below the fresh food compartment. Cool air is directed to the compartments of the refrigerator by use of a baffle assembly which includes a rotary damper which can be positioned to provide proportional amounts of chilled air to the three separate compartments based on the degree of cooling required. Accordingly, Claim 15 is respectfully submitted to be patentable over Lee in view of Peterson.

Claims 16-23 depend from independent Claim 15. When the recitations of Claim 16-23 are considered in combination with the recitations of Claim 15, Applicant submits that dependent Claims 16-23 likewise are be patentable over Lee in view of Peterson.

For at least the reasons set forth above, Applicant respectfully requests that the 103 rejection of Claims 8-23 be withdrawn.

The rejection of Claim 2 under 35 U.S.C. 103(a) as being unpatentable over Peterson in view of Hollenbeck (U.S. Patent 6,405,548) is respectfully traversed.

Hollenbeck describes a refrigeration control system containing a chamber in a fresh food compartment of a refrigerator. In one embodiment, a fan motor is positioned between an evaporator and the chamber. The fan motor speed or torque is adjusted to control the volume of cold evaporated air blown into the chamber. The rate of air flow to the chamber adjusts the temperature of the chamber. Notably, Hollenbeck does not describe a refrigerator including a refrigeration compartment, a freezer compartment adjacent the refrigeration compartment, and a third compartment adjacent the freezer compartment and separated from the refrigeration compartment and freezer compartment by a dividing wall.

Applicant respectfully submits that the Section 103 rejection of the presently pending claims is not a proper rejection. As is well established, obviousness cannot be established by combining the teachings of the cited art to produce the claimed invention, absent some teaching, suggestion, or incentive supporting the combination. Neither Peterson nor



Hollenbeck, considered alone or in combination, describes or suggests the claimed combination. Furthermore, in contrast to the assertion within the Office Action, Applicant respectfully submits that it would not be obvious to one skilled in the art to combine Peterson with Hollenbeck, because there is no motivation to combine the references suggested in the art. Additionally, the Examiner has not pointed to any prior art that teaches or suggests to combine the disclosures, other than Applicant's own teaching. Rather, only the conclusory statement that "[i]t would have been obvious to one having ordinary skill in the art at the time the invention was made from the teaching of Hollenbeck to modify the system of Peterson, by having both the freezer and refrigeration compartments parallel to each other in order to improve the access to the freezer compartment" suggests combining the disclosures.

As the Federal Circuit has recognized, obviousness is not established merely by combining references having different individual elements of pending claims. Ex parte Levengood, 28 U.S.P.Q.2d 1300 (Bd. Pat. App. & Inter. 1993). MPEP 2143.01. Rather, there must be some suggestion, outside of Applicant's disclosure, in the prior art to combine such references, and a reasonable expectation of success must be both found in the prior art, and not based on Applicant's disclosure. In re Vaeck, 20 U.S.P.Q.2d 1436 (Fed. Cir. 1991). In the present case, neither a suggestion or motivation to combine the prior art disclosures, nor any reasonable expectation of success has been shown.

Furthermore, it is impermissible to use the claimed invention as an instruction manual or "template" to piece together the teachings of the cited art so that the claimed invention is rendered obvious. Specifically, one cannot use hindsight reconstruction to pick and choose among isolated disclosures in the art to deprecate the claimed invention. Further, it is impermissible to pick and choose from any one reference only so much of it as will support a given position, to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one of ordinary skill in the art. The present Section 103 rejection is based on a combination of teachings selected from multiple patents in an attempt to arrive at the claimed invention. Since there is no teaching nor suggestion in the cited art for the combination, the Section 103 rejection appears to be based on a hindsight reconstruction in which isolated disclosures have been picked and chosen in an attempt to deprecate the present

invention. Of course, such a combination is impermissible, and for this reason alone, Applicant requests that the Section 103 rejection be withdrawn.

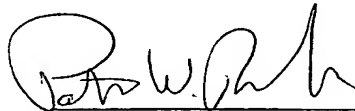
Further, and to the extent understood, neither Peterson nor Hollenbeck, considered alone or in combination, describes or suggests the claimed combination, and as such, the presently pending claims are patentably distinguishable from the cited combination. Specifically, Claim 1 recites a refrigerator including “a refrigeration compartment...a freezer compartment adjacent said refrigeration compartment...a third compartment adjacent said freezer compartment and separated from said refrigeration compartment and freezer compartment by a dividing wall comprising a duct extending through said dividing wall, said third compartment controllable in both a refrigeration mode and a freezer mode.”

Neither Peterson nor Hollenbeck, considered alone or in combination, describes nor suggests a refrigerator as recited in Claim 1. More specifically, neither Peterson nor Hollenbeck, considered alone or in combination, describe nor suggest a freezer compartment adjacent a refrigeration compartment, and a third compartment adjacent the freezer compartment and separated from the refrigeration compartment and the freezer compartment by a dividing wall including a duct extending therethrough. Rather, Peterson describes a refrigerator having a middle fresh food compartment, a freezer compartment arranged above the fresh food compartment, and a bottom compartment arranged below the fresh food compartment, and Hollenbeck merely describes a refrigeration control system. Notably, neither Peterson nor Hollenbeck, considered alone or in combination, describes nor suggests a third compartment adjacent the freezer compartment and separated from the refrigeration compartment and the freezer compartment by a dividing wall. Accordingly, Claim 1 is respectfully submitted to be patentable over Peterson in view of Hollenbeck.

Claim 2 depends from the independent Claim 1. When the recitations of Claim 2 are considered in combination with the recitations of Claim 1, Applicant submits that dependent Claim 2 likewise is patentable over Peterson in view of Hollenbeck.

In view of the foregoing amendments and remarks, all the claims now active in this application are believed to be in condition for allowance. Reconsideration and favorable action is respectfully solicited.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Patrick W. Rasche", written over a horizontal line.

Patrick W. Rasche  
Registration No. 37,916  
ARMSTRONG TEASDALE LLP  
One Metropolitan Square, Suite 2600  
St. Louis, Missouri 63102-2740  
(314) 621-5070